

# Legal Assistance Resource Center

## ❖ of Connecticut, Inc. ❖

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### H.B. 6616 -- Punitive damages

Judiciary Committee public hearing -- March 23, 2011

Testimony of Raphael L. Podolsky

<b>Recommended Committee action: REJECTION OF THE BILL</b>
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This bill proposes to change the standard of proof for the recovery of punitive damages by requiring that the court find "wanton misconduct" by "clear and convincing evidence." The bill is unnecessary, imposes an unreasonably high standard of proof, and ignores the policy reasons for punitive damages. There is no "problem" that needs fixing and no good reason to change existing law.

- There is already a well-established standard for punitive damages: Punitive damages will not be awarded unless the conduct in question shows reckless indifference or an intentional and wanton violation of rights. See, for example, Vandersluis v. Weil, 176 Conn. 353 (1978), quoted in Nielsen v. Wisniewski, 32 Conn. App. 133 (1993) ("Punitive damages are awarded when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights") and Tang v. Bou-Fakhreddine, 75 Conn. 334 (2003) ("...evidence that the defendant has acted with reckless indifference to the rights of the plaintiff or has committed an intentional and wanton violation of those rights is a necessary prerequisite to the award of punitive damages"). It is unclear whether "wanton misconduct" means the same thing or whether it is intended to narrow the existing standard (Is "wanton misconduct" the same as "wanton violation" of rights? Does it include or exclude "reckless indifference"? Changing the standard for no apparent reason will only induce litigation.
- The real effect of the bill is to impose the "clear and convincing" standard on these claims and thereby to make it even more difficult to obtain punitive damages. "Clear and convincing" is usually for restrictions on constitutional rights or major personal rights (e.g., the termination of parental rights). The award of punitive damages does not rise to that level.
- The existing standard already makes it difficult to prevail on a punitive damages claim: It is clear from the existing standard that, to obtain punitive damages, the conduct in question must not merely be negligent or even deliberate but must be very severe in nature. Under the existing "preponderance of the evidence" rule, punitive damages are denied in numerous cases.
- The bill will defeat a key purpose of punitive damages, which is to deter future misconduct in cases of egregious behavior. It will create a situation in which such damages will rarely be awarded.